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22 Attorney for Defendants

23 County of Alameda, “FNU” Moshcetti, Joshua Plossner,  
24 Kevin Calhoun, Eduardo Rivera-Velazquez, Monica Devine,  
25 Josephine Constanzo, and Dylan Green

26  
27  
28 **UNITED STATES DISTRICT COURT**  
29  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

30 CASE NO.: C19-cv-07940-SK

31  
32 **JOINT INITIAL CASE MANAGEMENT**  
**CONFERENCE STATEMENT**

33 **Conference Date:** July 27, 2020  
34 **Time:** 1:30 p.m.  
35 **Location:** San Francisco Courthouse  
36 **Method:** Unknown

37 **Trial Date:** None Set

38 Magistrate Judge Sallie Kim

Plaintiffs,

VS.

County of Alameda, et al.,

## Defendants.

Pursuant to the Courts Status Order, the parties submit the following Joint Initial Case

## Management Conference Statement.

## **1. Jurisdiction and Service:**

Plaintiff filed this case in federal court and assert federal question jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§1391(b), along with state law claims. Defendants do not contest federal jurisdiction, personal jurisdiction or venue. All named parties have been served.

## 2. Facts:

## a. Plaintiffs' Contentions

On June 23, 2018, Defendant Deputies Moschetti, Plosser, Calhoun, Rivera-Velazquez, Devine, Constanzo, and Green conducted a physical restraint of Decedent Du'Juan Armstrong in custody at Santa Rita Jail that included manual restraint and chest/diaphragm/abdominal compression, causing him to be asphyxiated and killing him. Mr. Armstrong had told jail workers that he had ingested narcotics and was intoxicated, and had been exhibiting bizarre behavoir at the jail for nearly 24 hours, finally causing jail staff to determinie that he be placed in a medical housing unit. Mr. Armstrong, who appeared to be paranoid and delusional, did not comply with Defendants efforts to remove him from his jail cell for the transport to the medical unit. Defendants forced Mr. Armstrong out of his cell and began moving him toward the medical housing unit. Mr. Armstrong, who remained in the same paranoid and delusional state, did not voluntarily comply with the defendants, who then slammed him down to the ground and began striking Mr. Armstrong with their knees and feet, and began restraining him using prone restraint methods. Defendants then forced Mr. Armstrong into a seated "L" position. Defendants put a spit hood on Mr. Armstrong (Plaintiffs are

1 not aware of any evidence that he had been spitting), which covered Mr. Armstrong's head, and  
 2 placed the WRAP device over Mr. Armstrong's entire body, while still handcuffing him. An initial  
 3 vitals check by a nurse did not raise any alarms, but a second nurse check Mr. Armstrong's pulse  
 4 shortly after the first check, and could find no pulse. Resuscitation efforts were ineffective, and Mr.  
 5 Armstrong was pronounced dead at 7:24 p.m. The initial decision to move Mr. Armstrong to the  
 6 medical unit was made less than an hour before, at about 6:30 p.m.

7 At autopsy, Petecheal hemorrhages, an indicator of compression-asphyxiation, were found in  
 8 Mr. Armstrong's eye, and his death was determined by the Alameda County Coroner's Office  
 9 pathologist who conducted his autopsy to have been caused by mechanical asphyxiation. While  
 10 cocaine and marijuana metabolites were found in the toxicological samples, these did not contribute  
 11 to Mr. Armstrong's death, according to the autopsy report<sup>1</sup>.

13                   **b.        Defendants' Version of Events**

14 This is a wrongful death action regarding an in custody incident (and then later death) of  
 15 Dujuan Armstrong ("Armstrong"), a twenty-three year old male, at the Outpatient Housing Unit  
 16 ("OPHU") of the Santa Rita Jail (SRJ) on June 23, 2018. During transport to OPHU, Alameda  
 17 County Sheriff Office ("ACSO") deputies used force to control Armstrong, including the deployment  
 18 of the WRAP leg restraint and spit mask. Subsequent to the use of force, Armstrong died. The  
 19 County Coroner determined that Armstrong tested positive for narcotics, and died of asphyxiation.

20 The lawsuit was filed by the Law Offices of John L. Burris. Per the Complaint, Plaintiffs  
 21 include Barbara Doss, the surviving mother of Armstrong, and his four surviving minor children,  
 22 B.A., J.L, J.A., and O.A, whose interests are represented by three separate Guardians Ad Litem,  
 23 namely Lilly Coleman, Janae Cook, and Chastity Williams. Defendants that are named are the  
 24 County of Alameda, Sheriff Gregory Ahern, and ACSO deputies "FNU" Moschetti, Joshua Plosser,

25  
 26                   <sup>1</sup> Defendants assert that so-called "Excited Delirium Syndrome" may have contributed to Mr. Armstrong's death. Coincidentally, The  
 27 Washington Post published an article yesterday, Sunday, July 19, 2020 dismissing Excited Delirium as a phony excuse for police  
 28 misconduct based on junk science. See "Police Keep using 'excited delirium' to justify brutality. It's junk science." Sub-heading: "The  
 'diagnosis' misappropriates medical terminology to shield officers from accountability." Online at:  
[https://www.washingtonpost.com/outlook/chokehold-police-excited-delirium/2020/07/17/fe907ec8-c6bc-11ea-b037-f9711f89ee46\\_story.html](https://www.washingtonpost.com/outlook/chokehold-police-excited-delirium/2020/07/17/fe907ec8-c6bc-11ea-b037-f9711f89ee46_story.html)

1 Kevin Calhoun, Eduardo Rivera-Velazquez, Monica Devine, Josephine Constanzo, and Dylan Green.  
 2 The County and ACSO deputies were served and filed a Motion to Dismiss as to particular causes of  
 3 action in this case - the excessive force claim under the Fourth Amendment, the due process claim  
 4 under the Fourteenth Amendment, and the *Monell* claim. The Motion was granted in part and denied  
 5 in part. (ECF 18; ECF 24.) Sheriff Gregory Ahern was dismissed from the action. The Defendants  
 6 have answered the operative complaint and this case is at issue.  
 7

8 Armstrong was convicted of burglary and sentenced to serve 120 days in jail. He was  
 9 authorized to complete his jail time on weekends. On June 22, 2018, Armstrong arrived at the jail at  
 10 8:37 p.m. He was not provided a medical assessment since he answered "no" to all medical  
 11 questions. Based on observations, at 10:15 p.m. he was transferred to a "sobering" cell. Armstrong  
 12 received a medical evaluation approximately 8 hours later. On June 23<sup>rd</sup> at 6:00 a.m. Armstrong  
 13 admitted to an ACSO deputy that he was under the influence of narcotics. Several ACSO deputies  
 14 suspected that Armstrong had ingested narcotics and/or possibly had drugs in his rectum while at the  
 15 jail (e.g. on June 23<sup>rd</sup> at 3:30 p.m., ACSO deputy Valentine observed Armstrong "on all fours  
 16 screaming for help", growling, crying, stripping off his clothes, placing his finger into his anus then  
 17 his mouth and chewing on the toilet). At 7:31 a.m., his urine sample was taken, and tested at 2:00  
 18 p.m. The sample tested positive for cocaine, methamphetamine and marijuana. A medical assessment  
 19 of Armstrong was completed at 2:36 p.m.

20 During Armstrong's transport to the OPMU, he physically resisted deputies while he was  
 21 handcuffed, including attempting to walk in the opposite direction, pushing back on the ACSO  
 22 deputies, attempting to run from deputies, and attempting to trip deputies. In order to control  
 23 Armstrong and overcome his resistance, and to protect themselves, ACSO deputies used force  
 24 including closed fist strikes and knee strikes. While deputies tried to get him into the WRAP.  
 25 During the application of the WRAP leg restraint, Armstrong continued to resist, pushing his body  
 26 back towards the deputies. To secure the WRAP, six deputies pushed/pulled Armstrong's upper body  
 27 and head forward, using their body weight in order to secure the WRAP. Ultimately, the straps were  
 28 tightened to hold Armstrong in this position. The spit mask was also applied to Armstrong.

1       On June 25th, Dr. Magat, the Medical Director of CFMG, opined that cardiopulmonary arrest  
 2 was the preliminary cause of death. She noted that Armstrong was 5'11" and weighed 271 pounds.  
 3 At intake, he appeared angry and uncooperative. His drug screen confirmed the presence of  
 4 marijuana, cocaine, and methamphetamine. She also noted that he became increasingly agitated and  
 5 resistive while being transported to OPHU resulting in ACSO deputies using force to retain him.  
 6

7       The autopsy of Armstrong was conducted by Dr. M. Ferenc, a forensic pathologist. The  
 8 findings indicated that Armstrong had preexisting pulmonary congestion, cardiac hypertrophy and  
 9 dilation, and borderline severe obesity. Petechiae were located in his eye and minor external injuries  
 10 were located on his wrist and hand. Armstrong's toxicology results were positive for cocaine  
 11 metabolite and marijuana metabolite. Coupled with his severe obesity, preexisting heart issues,  
 12 agitation, and physical exertion, his toxicology results suggest that excited delirium  
 13 contributed/caused his death. Dr. Ferenc concluded that Armstrong's drug use did not contribute to  
 14 his death, and determined that the cause of death was mechanical asphyxia.

15       **3. Legal Issues**

16       The Complaint currently asserts the following federal claims against Defendants: 1) Section  
 17 1983 excessive force; 2) Fourteenth Amendment right to familial relationship; and 3) Section 1983  
 18 unconstitutional policy, custom or practice (*Monell*). In addition, the Complaint asserts the following  
 19 state law claims: 1) violation of California Civil Code section 52.1 (Bane Act); and 2) negligence.

20       These claims raise at least the following issues: 1) whether defendants used objectively  
 21 reasonable force in an attempt to physically control Plaintiffs' Decedent; 2) whether the individual  
 22 officer defendants violated Plaintiffs Decedent's civil rights including access to medical care, and  
 23 whether such violations were reckless or intentional for purposes of the Bane Act claim; 3) whether  
 24 the individual officers are entitled to qualified immunity and/or state law immunity and/or other  
 25 defenses; 4) whether Plaintiffs can demonstrate any potential *Monell* claim against the City; whether  
 26 the individual defendant deputies breached their duty of care to Plaintiffs' Decedent.  
 27

28       **4. Motions**

1 The parties believe a Stipulated Protective Order will be filed in this matter to protect any  
2 confidential records that are to be disclosed in this litigation..

3 Defendants will be evaluating the filing of a dispositive motion for summary judgment and/or  
4 partial summary judgment at the appropriate time. Numerous motions in limine are contemplated.  
5 No other motions are currently contemplated at this early stage.

6 **5. Amendment of Pleadings**

7 Subsequent to the Court granting the Defendants' Motion to Dismiss in part, and Plaintiffs'  
8 compliance with the related Order. Plaintiffs will need to amend the Complaint further to more  
9 specifically state the identity of Defendant Moschetti, whose first name is unknown, once that  
10 becomes known to Plaintiffs early in discovery.

11 **6. Evidence Preservation**

12 Counsel for the parties represent that they have taken steps necessary to preserve evidence  
13 relevant to the issues reasonably evident in this action since this lawsuit was brought by Plaintiff.

14 **7. Disclosures**

15 Plaintiffs and Defendants anticipate that they will make their respective initial disclosures on  
16 or before August 7, 2020.

17 **8. Discovery**

18 The parties have not served written discovery, or set dates for depositions. They do not  
19 currently anticipate the need for additional written discovery or depositions beyond that permitted by  
20 the Rules, but will approach the Court regarding additional discovery if necessary.

21 Plaintiffs will submit written discovery to Defendant County, focusing on the subject-incident  
22 and video of it, and related policies and training, as well as the individual personnel records of the  
23 named defendant deputies. Plaintiffs will depose each defendant, and may depose several PMK  
24 witnesses regarding training and policies related to the subject-incident.

25 Defendants anticipate performing the following discovery in this matter: Written discovery to  
26 Plaintiffs, the deposition of Plaintiffs, the depositions of percipient or material witnesses regarding  
27 the subject incident and/or any damages or liability related issues, the depositions of any relevant  
28

1 treating physicians and/or medical providers of Plaintiffs and Plaintiffs' Decedent and the subpoena  
2 of relevant records pertaining to issues in this case. There will likely be a need for each side to take  
3 more than ten depositions in this case and the parties will seek leave of Court should discovery  
4 approach those levels and/or if there is such a need.

5 **9. Class Actions**

6 This matter is not a class action.

7 **10. Related Cases**

8 The parties are unaware of any related cases.

9 **11. Relief**

10 Plaintiffs are seeking general, special, and punitive damages in an unspecified amount, costs,  
11 attorneys' fees, and injunctive relief.

12 Defendants dispute that Plaintiffs are entitled to any relief or monetary damages in this action,  
13 or any injunctive relief. Defendants reserve the right to seek costs of suit against Plaintiffs should  
14 Defendants be determined to be the prevailing party.

15 **12. Settlement and ADR**

16 The parties are in agreement to participate in an early settlement conference before Magistrate  
17 Judge Laurel Beeler and have recently stipulated to that process. ECF 29.

18 **13. Consent to Magistrate Judge for All Purposes**

19 The parties have all consented to a Magistrate Judge.

20 **14. Other References**

21 The parties do not believe the case is suitable for reference to binding arbitration, a special  
22 master, or the Judicial Panel on Multidistrict Litigation.

23 **15. Narrowing of Issues**

24 Defendants will be seeking to narrow the issues in this matter via the discovery process and  
25 any stipulations that can be attained during the discovery process, as well as via the filing of any  
26 dispositive motions, or other motions, up to the time of trial. Plaintiffs contend that all issues pled  
27 are properly before the Court and will be ripe for trial.

**16. Expedited Trial Procedure**

2 This is not the type of case that can be handled in an expedited fashion.

**17. Scheduling**

<u>Case Event</u>	<u>Proposed Date/Disclosure</u> <u>Deadline/Hearing Date</u>
Deadline to seek leave to add new parties or amend the pleadings	August 31, 2020
Updated Joint Case Management Conference Statement due filed	October 15, 2020
ADR Completion Date	December 18, 2020
Non-expert discovery completion date	February 26, 2021
Expert disclosures required by Federal Rule of Civil Procedure	March 5, 2021
Rebuttal expert disclosures	March 19, 2021
Expert discovery completion date	May 28, 2021
Last hearing date for dispositive motions	July 12, 2021
Final pretrial conference	November 12 2021
Trial	December 6, 2021
Length of trial	10-12 days

**18. Trial**

19 The parties demand a trial by jury. The parties anticipate a 10 to 12 day jury trial.

**20. Disclosure of Non-Party Interested Entities or Persons**

21 The parties are not aware of any non-party interested entities or persons.

**22. Professional Conduct**

23 All attorneys of record for the parties represent that they have reviewed the Guidelines for  
24 Professional Conduct for the Northern District of California.

**25. Other Matters**

26 None known at this time.

27 The parties attest that concurrence in the filing of these documents has been obtained from  
28 each of the other Signatories, which shall serve in lieu of their signatures on the document.

1  
2 Dated: July 20, 2020

**THE LAW OFFICES OF JOHN L. BURRIS**

3 /s/ Ben Nisenbaum  
4 John L. Burris  
5 Ben Nisenbaum  
6 Lateef H. Gray  
7 Attorneys for Plaintiffs

8 Dated: July 20, 2020

**MCNAMARA, NEY, BEATTY, SLATTERY,  
BORGES & AMBACHER LLP**

9 /s/ Noah G. Blechman  
10 Noah G. Blechman  
11 Randolph S. Hom  
12 Attorney for Defendants